New York
APARTMENT LAW INSIDER®

The How-to Resource for Owners, Managers & Real Estate Professionals

SPECIAL ISSUE

INSIDE THIS ISSUE

GUEST EDITOR: Eileen O'Toole, Esq.

This Special Issue of the *Insider* was written by Eileen O'Toole, a partner with the New York City law firm of Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., whose law practice concentrates on landlord-tenant matters. A frequent writer and lecturer on rent regulation and other real estate topics, she is also the Contributing Editor of **New York Landlord v. Tenant,** the *Insider*'s monthly legal decision service.

Ms. O'Toole is also Editor of the annual **NYC Apartment Management Checklist**, a one-stop resource for complying with the many laws and regulations affecting New York City apartment buildings. The 2015 edition has been published (more information can be found *at www.ApartmentLawInsider.com*).

Ms. O'Toole graduated from Boston University School of Law and served as Deputy Counsel to the Rent Stabilization Association of N.Y.C., Inc. before entering private practice. She has served as a member of the NYC Civil Court's Housing Court Advisory Council, and as a lecturer at NYU's Real Estate Institute. ♦

FEATURE

Use Revised DHCR Forms for Vacancy and Renewal Leases

To implement the January 2014 amendments to the Rent Stabilization Code, the Division of Housing and Community Renewal (DHCR) has issued revised versions of its rent-stabilized Renewal Lease Form, as well as the New York City Lease Rider for Rent-Stabilized Tenants and the High Rent Vacancy Deregulation Notice. The new Lease Rider must be added to both vacancy and renewal leases.

Renewal Lease Form

The DHCR's revised Renewal Lease Form (DHCR Form RTP-8, issued 9/14) must be used for leases offered or executed on or after Oct. 1, 2014. The revised Renewal Lease Form is very similar to the previous form but now includes a sprinkler system notification required by Real Property Law Section 231-a (see "Put Required Sprinkler System Notice in All Residential Leases," below). The instructions attached to the Renewal Lease Form also have been revised. The Renewal Lease Form need only be offered and executed

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NEW LAWS & REGS

Put Required Sprinkler System Notice in All Residential Leases

Starting Dec. 3, 2014, all residential leases issued in New York State must include a notice advising tenants whether there is a sprinkler system at the "leased premises." If there is a sprinkler system, the owner must also state the last maintenance and inspection dates of the system.

This requirement is set forth in new Real Property Law Section 231-a. The law, enacted in response to the deaths in 2012 of three Marist College students killed in an off-campus apartment fire, was added to heighten tenant awareness of the fact that many buildings do not, or are not required to, have sprinkler systems. The law states that the notice provision must be contained in "every residential lease"

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Editor: **Eric Yoo**

Executive Editor: **Heather Ogilvie**

Director of Production: **Kathryn Homenick**

Director of Operations: **Michael Koplin**

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Revised DHCR Forms (continued from p. 1)

in English, and the New York City Lease Rider must be attached to the Renewal Lease Form.

The Renewal Lease Form can be found at the DHCR's website, at *www.nyshcr.org/Forms.*

NYC Lease Rider for Rent-Stabilized Tenants

Effective Oct. 1, 2014, an owner must include a copy of the revised New York City Lease Rider for Rent-Stabilized Apartments (DHCR Form RA-LR1, issued 7/14) with each vacancy or renewal lease offered to rent-stabilized tenants. The Lease Rider describes the rights and obligations of tenants and owners, sets forth how the rent was computed, and states that any increases charged comply with the Rent Stabilization Law and Code. The Lease Rider reflects changes made by the DHCR in January 2014 to Rent Stabilization Code Sections 2522.5(c)(1) and 2522.5(c)(3).

The Lease Rider replaces the DHCR's prior version of a rent-stabilized lease rider and must contain:

- The address of the apartment that is the subject of the lease or renewal lease;
- The signatures of the tenant and owner;
- Detailed information on the rent paid by the previous tenant, and a breakdown of any Individual Apartment Improvements (IAIs) with costs, as well as vacancy and longevity allowances applied to the prior rent so that a tenant can see how the new legal regulated rent was calculated;
- A notification to the tenant of his or her right to request from the owner detailed IAI supporting documentation (such as invoices, canceled checks, etc.) at the time the lease is being offered or within 60 days after it is executed. The owner must provide the requested documentation by certified mail or in person, with a signed acknowledgement of receipt, within 30 days of receipt of the request;
- A description of rights and duties of owners and tenants under the Rent Stabilization Law, Rent Stabilization Code, and other laws including information on preferential rents, air conditioner surcharges, high-rent vacancy deregulation, and IAI notification requirements.

If an owner doesn't give a tenant a copy of the Lease Rider when the tenant signs a vacancy or renewal lease, the tenant may file a complaint on DHCR form RA-90, "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease." The DHCR may treat this complaint as a specific overcharge complaint and may issue an order directing a refund of any determined overpayment plus all penalties otherwise due in an overcharge proceeding.

Copies of the Lease Rider are available for informational purposes only in languages required by the DHCR's language Access Plan, at *www.nyshcr.org*. However, the Lease Rider is required to be offered and executed only in English.

Here are highlights of the Lease Rider sections:

Section 1 of the Lease Rider sets forth a detailed "Vacancy Lease Rent Calculation." This portion of the Rider must be filled in only when provided to new tenants with a vacancy lease.

Part A of Section 1 sets up the calculation of applicable statutory and Rent Guidelines Board vacancy increases, along with itemized IAI increases.

Part B of Section 1 advises tenants if the last prior tenant was rent controlled.

Part C of Section 1 advises tenants if the rent is an Initial or Restructured Rent under any government program.

Part D of Section 1 advises tenants of "Other" circumstances, such as where a market or "first" rent is being set for an individual apartment after the outer dimensions of the apartment have been substantially altered.

Section 2 of the Lease Rider must be completed for both vacancy and renewal leases. Unlike the DHCR's prior rider, the Lease Rider now must be signed by both owner and tenant.

Section 3 of the Lease Rider is a lengthy summary of rules governing rent-stabilized tenancies.

✦ **Subsection 3(4)(A),** a key provision on IAIs, explains in bold-face type that:

> **The Rent Code Amendments of 2014 require that the DHCR Lease Rider offered to vacancy lease tenants contain notification to the tenant of the right to request from the owner by certified mail Individual Apartment Improvements (IAI's) supporting documentation at the time the lease is offered or within 60 days of the execution of the lease. The owner shall provide such documentation within 30 days of that request in person or by certified mail. A tenant who is not provided with that documentation upon demand may file form RA-90 "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a copy of a Signed Lease" to receive a DHCR Order that directs the furnishing of the IAI supporting documentation. (Refer to Rider Section 1, Individual Apartment Improvements.)**

✦ **Subsection 3(8).** This provision of the Lease Rider on services highlights that, under the amended Rent Stabilization Code, tenants should, but are not required to, give an owner written notification before filing a decrease in services complaint with the DHCR. The Lease Rider also advises tenants that prior written notification isn't required for emergency conditions and states, in bold-face type, that "It is recommended that tenants use a separate DHCR form for any problematic conditions that are not on this emergency condition list."

✦ **Subsection 3(11)** highlights in bold-face type a provision of the amended Rent Stabilization Code on luxury deregulation. It states that "Owners cannot serve the Income Certification Forms and/or Petition for High Income Rent Deregulation on an apartment where the tenant is the recipient of a Senior Citizen Rent Increase Exemption (SCRIE) or a Disability Rent Increase Exemption (DRIE)."

✦ **Subsection 3(17).** The Lease Rider also contains a notice provision at Subsection 3(17) to be used to advise tenants of any pending high-rent/high-income deregulation application:

> Pursuant to Section 5-a of the Emergency Tenant Protection Act, or Section 26-504.3 of the Rent Stabilization Law, the owner has commenced a proceeding before DHCR for deregulation of your apartment by filing a Petition by Owner for High Income Rent Deregulation on _____(Date), 20____.

This notice further advises tenants that a deregulation proceeding is pending and, if granted, the tenant's renewal lease will be canceled and will terminate after 60 days from either the date of issuance of an order granting deregulation or a later order dismissing a tenant's PAR.

For further information, see the following DHCR publications available at *www.nyshcr.org/Rent/FactSheets:*

- DHCR Fact Sheet #2: New York City Lease Rider and ETPA Standard Lease Addenda for Rent Stabilized Tenants
- DHCR Fact Sheet #4: Lease Renewal in Rent-Stabilized Apartments

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- DHCR Fact Sheet #5: Vacancy Leases in Rent-Stabilized Apartments
- DHCR Operational Bulletin 2014-3: New York City Lease Rider and EPTA Standard Lease Addenda for Rent-Stabilized Tenants
- High Rent Vacancy Deregulation Notice (DHCR Form HRVD-N, issued 4/14)

EDITOR'S NOTE: Outside New York City, a new "Standard Lease Addenda for Rent-Stabilized Tenants," similar to the Lease Rider, has been issued by the DHCR for use with rent-stabilized leases.

Deregulation Notice

Owners also are required to provide to the first tenant to take occupancy after an apartment becomes deregulated or exempt from rent stabilization a "High Rent Vacancy Deregulation Notice" (the "Deregulation Notice"). Revised in April 2014 under the amended Rent Stabilization Code, the Deregulation Notice replaces a prior form issued by the DHCR for this purpose. Like the Lease Rider used for rent-stabilized tenants, the new version of the Deregulation Notice is expanded to include a detailed calculation of rent increases resulting in deregulation, along with information regarding the last regulated rent and the reason for deregulation. The Deregulation Notice also must advise tenants that the last legal regulated rent or maximum rent can be verified by contacting the DHCR.

The owner must deliver the Deregulation Notice to the first tenant of an apartment after the unit becomes exempt or deregulated from the rent laws either by certified mail within 30 days after the tenancy commenced or after the signing of the lease by both parties, whichever occurs first, or personally to the tenant at the signing of the lease.

In addition to the Deregulation Notice, the owner must send to the tenant and file with the DHCR either an initial apartment registration form (RR-1), if the deregulated tenant is the first tenant to move in after rent control, or an annual rent registration form showing that the apartment is now permanently exempt.

For further information, see DHCR Fact Sheet #36, High-Rent Vacancy Deregulation and High-Rent High-Income Deregulation, available at *www.nyshcr.org/Rent/FactSheets/orafac36.pdf.* ♦

New Laws & Regs (continued from p. 1)

and should be added to all residential leases, renewal leases, subleases, license agreements, or other occupancy agreements. The law appears to apply to cooperative building proprietary leases as well. The law contains no provisions for enforcement or penalties in the event of noncompliance.

The sprinkler notice must be "conspicuous" and set forth in bold-face type. The Division of Housing and Community Renewal (DHCR) has built the sprinkler system notice provision into its recently amended Renewal Lease Form (see "Use Revised DHCR Forms for Vacancy and Renewal Leases," on p. 1) and, for rent-stabilized tenancies, it must be included both in vacancy and renewal leases. The rent-stabilized Renewal Lease Form, recently revised by the DHCR, includes the sprinkler system notice at new paragraph 10:

> **10. Leased premises does ❑, does not ❑ have an operative sprinkler system. If operative, it was last maintained and inspected on _____.**

The law doesn't define "leased premises," and it's unclear whether that term is intended by the legislature to refer to sprinkler systems within apartments only or contained in any portion of the building in which a tenant resides.

Owners or managing agents who draft their own leases should add this provision to their forms immediately. If you purchase form leases prepared, for example, by Blumberg, REBNY, or RSA, check that the required sprinkler notice provision is in the version of any lease form that you use. If not, add a simple lease rider to include the sprinkler notice provision. ♦

Q & A

Collecting Special Rent Increases Under RGBO No. 41

Q Can I collect special rent increases for low-rent apartments that were issued under Rent Guidelines Board Order No. 41 and later challenged in court?

A According to the Division of Housing and Community Renewal (DHCR), whether an owner can collect the $60 rent increase instead of a lower percentage rent increase depends on whether the owner notified the tenant that the higher flat-rate increase was the subject of a court appeal and could ultimately be collectible. In the case of *Casado v. Markus,* New York's highest court ultimately ruled that the special flat-rate increase for low-rent apartments was legal, reversing two lower court rulings.

In *Matter of Rosenblum* [DHCR Adm. Rev. Docket No. BP210049RO (7/18/14)], the DHCR ruled that because the owner didn't notify the tenant in his May 1, 2010, renewal lease that there was a possibility that the rent might be increased under a final ruling on the *Casado* case, the owner wasn't permitted to modify the rent increase provided in the lease. But the DHCR also found that the owner acted in the good faith belief that it was entitled to the $60 increase, and therefore the overcharge wasn't willful. The owner had charged the tenant a 6 percent renewal increase for the lease term between May 1, 2010, and April 30, 2012, instead of the higher flat-rate $60 increase because, at the time, the lower court in *Casado* had disallowed the $60 flat-rate increase for low rents that had been approved under Rent Guidelines Board Order (RGBO) No. 41.

Later, when New York's highest court upheld the $60 increase, the owner used the higher rent it could have charged under the tenant's 2010 renewal lease as the base rent for calculating the tenant's rent under his 2012 renewal lease. The DHCR disregarded the owner's argument that the DHCR renewal lease forms didn't allow him to modify the lease to preserve the higher rent on the form. The owner also had included both the higher rent and the rent collected in its annual rent registration.

The DHCR reached the opposite result in *Matter of SP 96-97 LLC* [DHCR Adm. Rev. Docket No. BR410028RO (7/18/14)]. In that case, when the owner offered the tenant a renewal lease for the period commencing on Aug, 1, 2010, the lower court decision was in effect barring the $60 rent increase. The owner advised the tenant of the final court decision permitting the flat-rate increase by letter in April 2011 and told the tenant it would seek to collect retroactive and prospective rent increases resulting from the court's order. The tenant's renewal lease also contained a clause permitting an adjustment to the rent during the term of the lease because of an order from the DHCR or the RGB. In this case, the owner also had an agreement with the building's tenant association concerning the collection of preferential rents, which permitted the owner to collect any increase permitted by law. ♦

COURT WATCH

➤ Court Refuses to Dismiss Case Challenging TPU, RSC Amendments

A lawsuit by owner organizations Rent Stabilization Association (RSA), Community Housing Improvement Program (CHIP), and the Small Property Owners of New York (SPONY), as well as individual property owners, was filed early this year in Brooklyn State Supreme Court to challenge the January 2014 amendments to the Rent Stabilization Code, as well as the creation of the DHCR's Tenant Protection Unit (TPU). The court recently denied the DHCR's motion to dismiss the case, and granted the owners' motion for discovery. Owners claim that the governor had no authority to create the TPU and that the TPU violates their constitutional rights by demanding that they reduce or refund rents without giving them the opportunity to be heard or to appeal TPU decisions. The governor created the TPU in 2012 and the code

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Court Watch (continued from p. 5)

amendments formalized its legal status. Owners also challenge 27 provisions of the amended Rent Stabilization Code [Portofino et al. v. DHCR, Index No. 501554/2014 (Sup. Ct. Kings Co.)].

➤ No Luxury Deregulation of Rent-Controlled Units After J-51 Expiration

The Appellate Division, First Department, ruled in October 2014 that, once a building receives J-51 tax benefits, owners are forever barred from seeking luxury deregulation of rent-controlled apartments, even after the J-51 benefits expire [Ram I v. DHCR, 993 NYS2d 706 (App. Div. 1 Dept. 2014)]. The same court came to the opposite decision concerning rent-stabilized apartments in the earlier case of *Shiffrin v. Lawlor* [101 A.D.3d 456 (1st Dept. 2012)]. The court explained that the results were different in the *Ram I* case because, unlike the rent stabilization laws, the rent control laws didn't contain language stating that once the J-51 benefits expired, the rent-controlled tenants would be subject to regulation as if the J-51 benefits had never applied.

➤ Tenants Seek Class Action Suit for Unlawful Deregulation

In October 2014, New York's highest court heard arguments on three cases that raise the question as to whether tenants can pursue class action lawsuits against owners based on claims of unlawful deregulation while the buildings received J-51 tax benefits. In each case the Appellate Division, First Department, had ruled that the statute generally prohibiting a class action to recover a penalty did not bar tenants from suing as a class to recover rent overcharges based on unlawful deregulation. The tenant who sought approval of a class action had waived her right to seek triple damages for rent overcharge, and other individual class members would be allowed to opt out of the class to pursue their triple damages claims if they believed there was a lawful basis to do so. Owners appealed these decisions, and the Court of Appeals will now determine whether these class actions can proceed [Gudz v. Jemrock Realty Company, LLC, 105 AD3d 625 (1st Dept. 2013); Borden v. 400 East 55th Street Associates, LP, 105 AD3d 630 (1st Dept. 2013); and Downing v. First Lenox Terrace Associates, 107 AD3d (1st Dept. 2013)]. ♦

LANDLORD V. TENANT

Each month our sister publication, NEW YORK LANDLORD V. TENANT, *summarizes approximately 60 decisions by the courts and the Division of Housing and Community Renewal (DHCR) involving owners and tenants. Here are six from the October 2014 issue.*

Discrimination: Tenant Claims Therapy Dog Needed as Treatment for Disability

Landlord sued to evict tenant who kept a dog in violation of his lease and didn't remove the dog after landlord sent tenant a notice to cure. Tenant then complained to the State Division of Human Rights (DHR), claiming discrimination. Tenant argued that the pet was a therapy dog needed to relieve tenant's depression. The DHR later sued landlord to recover damages based on unlawful discrimination. Landlord asked the court to bar DHR from presenting testimony or documents asserting that tenant should be allowed to keep the dog as a reasonable accommodation to his disability.

The court ruled for landlord. Tenant's psychotherapist wrote varying opinions over time as to tenant's diagnosis. At one point the therapist stated that, while tenant was no longer depressed, he needed the dog to prevent a recurrence of the symptoms. The court agreed with landlord that these statements were too speculative to prove that tenant was suffering from a disability that required a reasonable accommodation.

- NYS Division of Human Rights v. 111 East 88th Partners: Index No. 402894-2007, NYLJ No. 1202670317446 (Sup. Ct. NY; 9/5/14)

Fire Department Violations: Penalties Reduced for Prompt Correction of Fire System Violations

The Fire Department issued a violation notice to landlord for failing to maintain required signs and postings, painted pipes and valves, and combination fire protection system. Landlord claimed all violations had been corrected. The ALJ ruled for landlord in part and

imposed reduced penalties totaling $1,075. Landlord appealed and lost. Landlord claimed that there should be no penalties because the three violations were corrected. But correcting violations after the violation notice is issued isn't grounds for complete dismissal of the violations. Since the violations were corrected before the initial hearing date, the ALJ properly assessed mitigated penalties.

- 101 Ludlow LLC: ECB App. No. 1400666 (8/28/14)

Landlord's Negligence: Landlord Not Responsible for One Tenant's Attack on Another

Tenant of a rented room sued landlord for negligence after another tenant attacked him in the building. Landlord asked the court to dismiss the case without a trial. The court ruled for landlord. Tenant argued that landlord was aware of the other tenant's violent tendencies, history of harassment, and criminal record, and that he had complained to landlord previously of the other tenant's behavior. But landlord wasn't responsible to protect one tenant from the criminal acts of another tenant. That would place an unreasonable burden on landlord over the acts of a third party over whom he had no control. Even if landlord evicted the other tenant, that wouldn't have necessarily prevented the incident from occurring.

- Palmitesta v. Bonifazio: Index No. 602814/2014, NYLJ No. 1202668581902 (Sup. Ct. Nassau; 8/21/14)

Major Capital Improvements: MCI Granted for CCTV Security System

Landlord applied for MCI rent hikes based on the installation of a new CCTV security system, four wooden entrance doors, new windows and lintels, a sidewalk bridge, and engineer fees in connection with the window installation. The DRA ruled for landlord in part but disallowed the cost of the entrance doors and consulting engineer fees. Tenants appealed, claiming that the useful life of the prior security camera system hadn't expired. Tenants also claimed that the prior landlord had previously replaced windows in many renovated apartments.

The DHCR ruled against tenants. The prior security system didn't have cameras located at every building entrance, and didn't have cameras that were monitored by a working monitor on a continuous basis. The new CCTV security system therefore wasn't a mere replacement of the prior security system. Landlord also installed 607 new aluminum windows and did so in each of the building's apartments. Tenants presented no proof of prior window installations and no prior MCI increase was granted for windows.

- 330 East 63rd St.: DHCR Adm. Rev. Docket No. ZA410049RT (8/15/14)

Rent Overcharge: Triple Damages Revoked Due to Overcharge Refund

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $60,000, including triple damages. Landlord appealed that portion of the order that assessed triple damages. Landlord pointed out that it had sent tenant a refund check for $24,000 before the DRA issued its order, which covered the overcharge plus interest. And the overcharge was the result only of a DHCR rent reduction order that had been issued six years before tenant filed her complaint. The DHCR ruled for landlord and revoked the triple damages.

- Monte Carlo, LLC: DHCR Adm. Rev. Docket No. AQ710016RO (8/15/14)

Rent Stabilization Coverage: Tenant Didn't Receive J-51 Lease Riders

Landlord applied for high-rent/high-income deregulation of rent-stabilized tenant's apartment in 2010. Tenant answered the DRA's notice of the application by stating that he was exempt from luxury deregulation because his building was receiving J-51 tax benefits. The DRA sent tenant several follow-up notices, again requesting income certification information. Tenant again stated only that he wasn't subject to deregulation. The DRA ruled for landlord based on tenant's failure to respond to its notices.

Tenant appealed and won. The building was subject to rent stabilization only as a result of receiving J-51 benefits and was not otherwise rent stabilized. Tenant's initial rent was over $2,000, and the J-51 benefits had expired by the time that landlord sought deregulation of tenant's apartment. However, tenant's leases, including the renewal lease in effect at the time that the J-51 benefits expired, didn't contain a notice provision required under Rent Stabilization Law Section 26-504(c) advising tenant that he was subject to deregulation when the J-51 benefits expired. ♦

- Resnicow: DHCR Adm. Rev. Docket No. BU410032RT (8/5/14)

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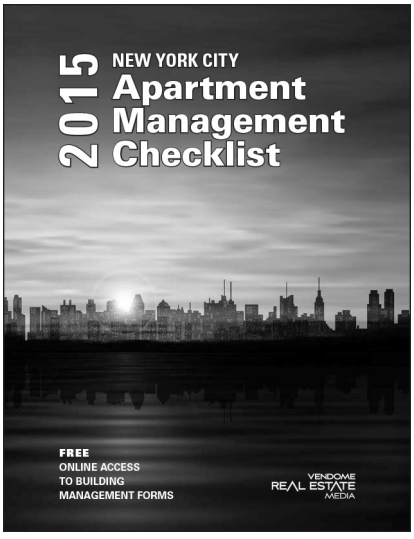

The **2015 CHECKLIST** has been updated to include new information on:

- Building Resiliency Maximization — a new chapter summarizes the measures under Local Laws 79 through 83 of 2013 to maximize building resiliency in the event of severe weather.
- 2014 Building, Plumbing, and Mechanical Codes, including extensive Building Code amendments on safety and signage requirements.
- 2014 Fire Code, including new requirements for elevator signage and amended emergency preparedness provisions.
- DEP's updated performance standards for boilers and water heaters, including updated inspection report forms.
- New requirement to provide a notice in all leases of whether there is a sprinkler system at the leased premises.
- Amended provisions to building income and expense reporting requirements.
- NYC's new Toilet Replacement Program.
- Amended DEP regulations, including rules on water metering devices.
- Plus, the **2015 CHECKLIST** contains a User ID and password so you can get online access to all forms contained in the book in one convenient location.
- And much more

To order the 2015 NYC APARTMENT MANAGEMENT CHECKLIST, visit us online at http://vendomerealestatemedia.com/2015AMC, or for FAST SERVICE, CALL 1-800-519-3692.